

**Notice of Allowability**

Application No.

10/718,271

Examiner

Fred Ferris

Applicant(s)

PODOLSKY, RICHARD

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1 June 2007.
2. ☒ The allowed claim(s) is/are 1-45.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 20070828.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
FRED FERRIS  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100

### **DETAILED ACTION**

1. *Claims 1-45 have been presented for examination based on applicant's amendment filed 1 June 2007. Amended claims 1-45 remain pending in this application and have now been allowed over the prior art of record.*

### **Response to Arguments**

2. *Applicant's arguments filed 1 June 2007 have been fully considered and are persuasive.*

*Regarding applicants' response to drawing objections:* *The objection relating to missing features is withdrawn in view of new Figure 8 but the drawings remain informal.*

*Regarding applicants' response to 101 rejections:* *The examiner withdraws the 101 rejection in view of applicants' amendment to the claims and supporting arguments filed 1 June 2007.*

*Regarding applicants' response to 112(1/2) rejections:* *The examiner withdraws the 112(1/2) rejection in view of applicants' amendment to the claims and supporting arguments filed 1 June 2007.*

*Regarding applicants' response to 102/103 rejections:* *The examiner withdraws the 102/103 rejections in view of applicants' amendment to the claims and supporting arguments filed 1 June 2007.*

### **Allowable Subject Matter**

3. *Claims 1-45 are allowed over the prior art of record.*

*The following is an examiner's statement of reasons for allowance:*

*Applicants are disclosing a computer based method for calculating probability of collision by birds with a wind turbine inclusive of modeling a wind turbine, modeling an approaching bird, and calculating the probability of wind-turbine collision by the bird. This has been disclosed in the prior art of record.*

*While these elements are individually disclosed in the prior art, the prior art of record does not meet the conditions as suggested in MPEP section 2132, namely:*

*"The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an **ipsissimis verbis** test, i.e., identity of terminology is not required. **In re Bond**, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."*

*In particular, the prior art of record does not explicitly disclose the specific sequence of method steps that includes modeling a wind turbine, modeling an approaching bird, modeling a wind park, calculating the probability of wind-turbine collision by the bird, in combination with a modeling step of modeling the wind turbine modeling as a rotor and at least one of nacelle, a monopole, and a hub, and where the wind park includes more than one wind turbine, as now required by amended independent claims 1 and 16. Similarly, amended independent claims 31 and 38 include the additional combination that requires calculation comprising using the structure model, approaching-bird model, and the structure-area model.*

*The prior art of record discloses elements of the claimed invention as follows:*

- "The mathematical model of bird collisions with wind turbine rotors", Tucker:  
teaches method for calculating probability of collision by birds with a wind turbine inclusive of modeling a wind turbine, modeling an approaching bird, and calculating the probability of wind-turbine collision by the bird. However, Tucker does not explicitly disclose the specific sequence of method steps that includes modeling a wind turbine, modeling an approaching bird, modeling a wind park, calculating the probability of wind-turbine collision by the bird, in combination with a modeling step of modeling the wind turbine modeling as a rotor and at least one of nacelle, a monopole, and a hub, and where the wind park includes more than one wind turbine, as now required by amended independent claims 1 and 16, or the additional combination that requires calculation comprising using the structure model, approaching-bird model, and the structure-area model, as required by amended independent claims 31 and 38.

Dependent claims are deemed allowable as depending either directly or indirectly from independent claims 1, 16, 31, or 38.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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**Conclusion**

4. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached at 571-272-3780. The Official Fax Number is: (571) 273-8300.*

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